

## Settlement Agreement

This Settlement Agreement made this 25th Day of January 2008

Between:

The Government of the Province of British Columbia (“Government”)

- and -

Health Employers Association of British Columbia (“HEABC”)

- and -

Community Bargaining Association (“CBA”)

### WHEREAS:

- A. The parties have met and considered the decision of the Supreme Court of Canada dated June 8, 2007 in the matter of *Health Services and Support – Facilities Subsector Bargaining Association v. British Columbia* (the “Decision”).
- B. The parties have resolved all issues arising from the Decision which affect members of the CBA.
- C. It has been agreed to enter into this Settlement Agreement.

**THEREFORE**, the parties agree as follows:

### 1. Effect of Agreement:

- 1.1. The responsibilities which arise under this Settlement Agreement will be the responsibility of the party identified as bearing the responsibility.

This Settlement Agreement will be supplementary to the provisions of the Community Subsector Collective Agreement between HEABC and the CBA which is in effect for the term of April 1, 2006 to March 31, 2010 in the manner established in this Settlement Agreement.

This Settlement Agreement will come into effect on \_\_\_\_\_ [date], provided it has been approved by the CBA, by HEABC, and by the Government.

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## **2. Contracting Out:**

- 2.1. A Memorandum of Agreement entitled “Contracting Out” will be added to the 2006-2010 Community Subsector Collective Agreement as set out in Appendix A.

## **3. Consultation:**

- 3.1. A new Memorandum of Agreement entitled “Consultation – Contracting Out” will be added to the 2006-2010 Community Subsector Collective Agreement as set out in Appendix B.

## **4. Employee Options:**

- 4.1. A new Memorandum of Agreement entitled “Employee Options – Contracting Out” will be added to the 2006-2010 Community Subsector Collective Agreement as set out in Appendix C.

## **5. Financial Issues:**

- 5.1 A lump sum of four million dollars (\$4,000,000) will be allocated for the following:

- A. Two and one-half million dollars (\$2,500,000) for retraining and other mitigation options as follows:
- a. For the re-training of individuals previously laid off due to contracting out;
  - b. for re-training for employees laid off due to contracting out in the future;

The re-training will include: in-service training in home support, home support scheduler training, training for LPNs, certification training for Community Health Workers and Resident Care Aides, upgrading to Registered Nurse status, and ESL training.

- c. for early retirement/voluntary departure; and
- d. for an enhanced severance allowance that is in excess of the amount payable under Section 9 of MOA #23, Re: Consequences of Contracting Out/Re-Tendering by Health Authorities. This

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excess allowance (greater than what is currently provided for under Section 9) will be as follows:

Laid off employees within the Number as defined in MOA #23 will be entitled to the following severance pay: one (1) week of pay for every year of service to a maximum of ten (10) weeks of pay, prorated for regular part-time employees.

The enhanced severance allowance in excess of Section 9 of MOA #23 shall be funded from the lump sum fund established in Section 5 of this Settlement Agreement and will only be paid to the extent that such funds remain available. The part of the fund allocated for this purpose shall be administered by the Re-training Committee.

- B. One and one-half million (\$1,500,000) for payments to impacted individuals.
- 5.2. The parties agree that the total amount committed for the above purposes must not exceed four million dollars (\$4,000,000).
- 5.3. A joint governance committee will be established between HEABC and the Community Bargaining Association to set priorities for how to allocate payments to impacted individuals. The joint governance committee will be established within thirty (30) days of the effective date of a Settlement Agreement and will be terminated on December 31, 2008.
- 5.4. The parties agree on the following process for the identification and categorization of impacted individuals entitled to a payment from the one and one-half million dollar (\$1,500,000) lump-sum amount:
- A. Step One:
- i. The Community Bargaining Association will engage in the following preliminary process at its expense:
- a) the identification of impacted individuals;
  - b) the criteria and categories of impact; and
  - c) the value assigned to each category of impact.
- By no later than March 31, 2008, the number of categories and the relative value of such categories will be established, so that the determination can be made as to the expenditure of the amount allocated under subsection e. of Section 5.1 above by calculating the number of impacted individuals in each category times the relative value of all categories divided by the amount allocated under subsection e. of Section 5.1 above.
- B. Step Two:
- i. The joint governance committee with a neutral Chair will be established comprised of three (3) representatives appointed by the

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- Community Bargaining Association and three (3) representatives appointed by HEABC. The parties agree that Chris Sullivan will be appointed as the neutral Chair of the joint governance Committee.
- ii. The Committee will determine its own process.
  - iii. The Committee will review and confirm:
    - a) the identification of impacted individuals;
    - b) the categories of impact and criteria for inclusion in that category;
    - c) the application of the criteria to impacted individuals and/or the assignment of impacted individuals to categories of impact; and
    - d) the value assigned to each criteria in the category of impact.
  - iv. Disputes by previously impacted individuals will be limited to appropriate application of the criteria to individuals for placement within the categories established.
  - v. The application of the criteria to impacted individuals and/or the assignment of impacted individuals to categories of impact must be finalized, prior to any distribution of funds, in the event there are disputes over assignments.
  - vi. The Chair has jurisdiction only to resolve disputes regarding the allocations (including those as between purposes listed in A above and B above as referenced in Section 5.1 above) and development of criteria and assignment of individuals to categories, and there is no jurisdiction to render any decision, the effect of which would result in the lump sum of one and one-half million dollars (\$1,500,000) being exceeded. The Chair also has jurisdiction to determine that the process set out in Step One and Step Two will not be conducted in a manner that is arbitrary, discriminatory, or in bad faith.
  - vii. The parties agree that the cost of the arbitrator and any other costs associated with Step One and Step Two of this process shall be paid from the one and one-half million dollar (\$1,500,000) lump sum amount.

## **6. Release:**

- 6.1. This Settlement Agreement will exist as a separate Agreement and will not form part of the Community Subsector Collective Agreement. Notwithstanding the foregoing, any amendments arising from this Settlement Agreement are supplementary to the Community Subsector Collective Agreement and will be deemed to be part of the Community Subsector Collective Agreement.
- 6.2 This Settlement Agreement will resolve all outstanding grievances and claims by the Community Bargaining Association and each of the member Unions of the Community Bargaining Association on their own behalf and on behalf of their

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individual members or former members with respect to Part 2 of the *Health and Social Services Delivery Improvement Act*, and Parts 1 and 4 as they affect Part 2, including:

- a) Every grievance filed by a member or former member of the Community Bargaining Association, including policy grievances, between January 28, 2002 and the date of this Settlement Agreement relating directly or indirectly to the application, interpretation, operation, constitutionality of, or in any way engaging, the *Health and Social Services Delivery Improvement Act* or relating to the impact of Health Sector Employer or Government actions taken pursuant to the *Health and Social Services Delivery Improvement Act*.
  - b) Any claim by the Community Bargaining Association, a constituent member of the Community Bargaining Association, or any member or former member of any of the constituent Unions of the Community Bargaining Association in relation to the *Health and Social Services Delivery Improvement Act*.
  - c) Any claim by the Community Bargaining Association or any of its constituent Unions for damages or any other form of relief pursuant to or related in any fashion to the June 8, 2007 of the decision of the Supreme Court of Canada in the *Health Services* case.
- 6.3. The Community Bargaining Association and each of its constituent Unions agree that they will not initiate any new claims or grievances in respect of the *Health and Social Services Delivery Improvement Act*.
- 6.4. Sections 6.2 and 6.3 do not affect a future claim that an Employer covered by the *Health and Social Services Delivery Improvement Act* has acted contrary to a provision of the *Health and Social Services Delivery Improvement Act*.
- 6.5. This Settlement Agreement is entered into on a strictly without prejudice basis to the position of the Government and HEABC that the *Health Services* decision has no retrospective or retroactive effect. This Settlement Agreement is entered into on a strictly without prejudice basis to the position of the Community Bargaining Association that the *Health Services* decision has retrospective or retroactive effect.
- 6.6. The Government may be presenting legislation or amendments to the *Health and Social Services Delivery Improvement Act* to the Legislative Assembly, which shall not be inconsistent with this Settlement Agreement, to implement the terms of this Settlement Agreement. It is a fundamental term of this Settlement Agreement that any such legislation will not be inconsistent with the terms of the Settlement Agreement.

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- 6.7 Unless provided otherwise in this Settlement Agreement, the parties confirm that all of the Community Subsector Collective Agreement provisions referenced in Information Appendix #4 – Re: Health and Social Services Delivery Improvement Act as being voided, are deleted.
- 6.8 Section 6.7 above does not apply to the first paragraph of Article 13.16 as it is qualified by Appendix A of this Settlement Agreement (Memorandum of Agreement – Contracting Out).
- 6.9 It is understood that off-the-record discussions during the negotiations will not be referred to, introduced, or relied on in any future proceedings except in a proceeding to determine the correct interpretation of the Settlement Agreement, including these Release provisions.

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**Appendix A**  
**Community Subsector Collective Agreement 2006-2010**  
**Article 13.16 – Contracting Out**

- a) Notwithstanding Article 13.16, Health Sector Employers will have the option to contract out work carried out by members of the Community Bargaining Association bargaining unit including where it results in the layoff of members of the Community Bargaining Association bargaining unit. This Memorandum of Agreement continues in force and effect until such time as HEABC and the Community Bargaining Association negotiate changes to it.
- b) **Return of A Service:** If a Health Sector Employer returns a service for direct delivery that was contracted out, employees who were employed as regular employees by the Health Sector Employer at the effective date of the contracting out and are regular employees of the contractor at the time that the service returns to direct delivery:
- i. Will be offered employment by the Health Sector Employer subject to availability of positions; and
  - ii. Where the former employee accepts the offer, he/she will have previous Health Sector service and seniority recognized.

This provision applies for the balance of the term of the 2006-2010 Community Subsector Collective Agreement and applies until the effective date of a renewal Collective Agreement.

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**Appendix B**  
**Community Subsector Collective Agreement 2006-2010**  
**Consultation – Contracting Out**

- a) Health Sector Employers will engage in a consultation process as described below effective at least sixty (60) calendar days in advance of the issuance of a Request for Proposals (“RFP”) or by issuance of an equivalent invitation to bid by a Health Sector Employer when it is considering contracting out that may result in the layoff of bargaining unit employees.
- b) Consultation Process – General: In the sixty (60) calendar day period, the Union will be provided an opportunity at the appropriate project level to discuss alternatives to the proposed contracting out and/or the options for impacted employees. Health Sector Employers will give good faith consideration, in the discussions on contracting out, to alternatives advanced by a Union.

Where a project involves services that impact a significant number of the worksites amalgamated within one (1) Health Authority, or a project that would impact on fifty (50) or more FTEs at an Affiliate Employer, HEABC and the Community Bargaining Association agree that the sixty (60) calendar day period will be changed to up to ninety (90) calendar days.

At the end of the sixty (60) or ninety (90) calendar day period as applicable, the Health Employer will have the discretion to proceed with contracting out.

- c) Consultation Process – Two (2) or More Health Authorities: Where a project would apply to two (2) or more Health Authorities covered by the Community Subsector Collective Agreement, HEABC and the Community Bargaining Association agree to refer the project to a provincial level Alternate Service Delivery Committee jointly established by HEABC and the CBA. In this event the consultation process will begin ninety (90) days in advance of the issuance of an RFP by the Health Authorities or by issuance of an equivalent invitation to bid.

The Committee will be comprised of four (4) representatives appointed by the Community Bargaining Association and four (4) representatives appointed by HEABC. The Committee will have the ability to bring in a reasonable number of subject matter experts in the work performed and/or the proposed project. HEABC and the Community Bargaining Association also agree that where a project impacts multiple Union Bargaining Associations, the Committee may, by mutual agreement, meet with other Union Bargaining Associations but the membership of the Committee will not include representatives from other Union Bargaining Associations.

The Committee will be the forum for the discussion of alternatives to the proposed contracting out and/or the options for impacted employees. The Health Authorities will give good faith consideration, in the discussions on contracting



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out, to alternatives advanced by a Union.

HEABC and the Community Bargaining Association will each pay their own expenses for their respective Committee members. Employees who are members of the Committee shall be granted leave without loss of pay or receive straight-time regular wages while attending meetings of the Committee.

At the end of the ninety (90) calendar day period, the Health Authorities will have the discretion to proceed with contracting out.

- d) Disclosure: Health Employers will provide the Union with a detailed description of the proposed contracting out. Relevant information and supporting documents on the proposed contracting out will be disclosed by the Health Employer to the Union to inform the discussions regarding alternatives and options for affected employees.
- e) Confidentiality: Confidentiality will be needed until such time as the Employer is prepared to announce a decision.

HEABC and the Community Bargaining Association agree that the Union has the ability to discuss with impacted employees alternatives and options on a confidential basis.

HEABC and the Community Bargaining Association agree that should any financial and/or proprietary information of the Employer and/or any potential third party contractor be disclosed, such information will remain confidential.

- f) Notification of CBA: Once the Health Employer makes a decision under the process set out in this Memorandum of Agreement, the Community Bargaining Association will be notified of the decision in writing. If the Health Employer makes a decision to proceed with contracting out, the Parties agree that they will move to the process set out in the Memorandum of Agreement Re: Employee Options – Contracting Out.
- g) Application of *Labour Relations Code*: HEABC and the Community Bargaining Association agree that the process described in this Memorandum of Agreement and the Memorandum of Agreement entitled “Employee Options – Contracting Out” establish the specific process of consultation and adjustment contemplated by Section 54 of the *Labour Relations Code* and satisfies the requirements of this Section of the *Labour Relations Code* for the purposes of contracting out that results in the layoff of members of the Community Bargaining Association bargaining unit.

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**Appendix C**  
**Community Subsector Collective Agreement 2006-2010**  
**Employee Options – Contracting Out**

The Parties agree as follows:

**Part 1 – Employee Options**

- a) **Employment with the Contractor**: If a regular employee, who has been issued a displacement letter due to contracting out, is interested in being employed by the contractor, the Health Employer will facilitate the application process.
- b) **Expanded Access to Regular On-Going Vacancies and Casual Lists**: A regular employee, who has been issued a displacement letter due to contracting out, who has not terminated and who has no bumping or vacancy options under the Community Subsector Collective Agreement at his/her current Employer shall be entitled to:
- Apply for an unfilled regular on-going vacancy in accordance with Article 12.3 in any one of the six (6) Health Authorities.

Employees accessing these vacancies in the Health Sector in a location that is more than fifty (50) kilometres from his/her previous worksite and who chooses to relocate will be entitled to relocation expenses of five hundred dollars (\$500) for a move of up to two hundred and forty (240) kilometers and eight hundred dollars (\$800) for a move of beyond two hundred and forty (240) kilometers. Relocation expenses must be claimed from his/her former Employer within six (6) months of the start date of the regular position and must be supported by receipts.

or

- Register for casual work under Article 29 on one casual list in any one (1) Health Authority worksite in the province in the classification he/she was displaced from provided the employee is qualified to perform and capable of performing the work.

A displaced regular employee who successfully posts into a regular ongoing vacancy or registers for casual employment prior to the expiry of his/her recall period under the process in this Memorandum of Agreement shall have eligibility periods waived for health and welfare benefits as follows:

- A displaced regular employee who successfully posts into a regular ongoing vacancy will be entitled to coverage under the Medical, Dental, and Extended Health Plans effective the first day of the month following appointment to the position.

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- A displaced regular employee who registers for casual employment shall be governed by Article 29.7 but will have the option to enroll in the health and welfare plans as per Article 29.9(a) without having to work one hundred and eighty (180) hours.
- c) **Re-employment with Previous Health Sector Employer:** A regular employee laid off as a result of contracting out who successfully applies on a posting for a regular on-going position at his/her previous Health Sector Employer within one (1) year from the effective date of the end of the recall period will have his/her previous Health Sector service and seniority restored. This provision will not apply to an employee who has ported benefits to another Health Sector Employer within one (1) year from the effective date of the end of the recall period.
- d) **Re-training Fund:** A re-training fund will be established to facilitate access to re-training for a job in areas of need in the Community Subsector.
- Re-training or other mitigation options (ERIP/VDP/Enhanced Severance as referenced in Section 5.1 of the Settlement Agreement) for employees laid off due to contracting out in the future – funding amounts to be determined.
  - Individuals previously laid off due to contracting out – funding amounts to be determined. Individuals previously laid off due to contracting out who are interested in re-training must receive an allocation from the re-training fund by December 31, 2008.
- After that date, remaining funds shall be made available to all employees to be re-trained in areas of need in accordance with the terms determined by the joint committee. Individuals previously laid off due to contracting out who are re-trained and who are not already in the Health Sector and who apply for a regular on-going vacancy with any Health Sector Employer are considered an external applicant under Article 12.3 of the Community Subsector Collective Agreement.
- e) Subject only to the variations specified in this Memorandum of Agreement, the Community Subsector Collective Agreement will apply and prevail.
- f) This Memorandum of Agreement is effective from April 1, 2006.

## **Part 2 – Re-Training Committee**

A joint Re-training Committee will be established comprised of three (3) representatives appointed by the Community Bargaining Association and three (3) representatives

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appointed by HEABC. The principles governing the Committee's decisions and the application of the re-training funds are:

- a) Re-training must be for an area of need in the Community Subsector as determined and approved by the Employer.
- b) An employee must be qualified and capable before being able to bid on a vacancy upon completion of any re-training.
- c) The funds shall cover the cost of the course and, where appropriate, a reasonable stipend for current employees in the Health Sector to assist with living expenses while enrolled in the course. The joint committee will determine the value and application of the stipend.
- d) During the re-training period, the employee will be placed on a casual list at his/her current Health Sector Employer and: (a) can access work during the re-training period if the employee is qualified; or (b) if not qualified, is deemed unavailable until the re-training is concluded.
- e) The Committee may discuss retraining for areas of need in the Facilities Subsector.
- f) A re-trained employee commits to stay in the Health Sector upon conclusion of re-training and posting into a vacancy. Failure to stay in the Health Sector for a period of three (3) times the length of the re-training period results in a prorated share of reimbursing the Fund for the cost of the re-training and, where applicable, the stipend payments.
- g) Should no regular on-going vacancy be available, a re-trained employee must register on one casual list in any one (1) of the six (6) Health Authorities across the province upon completion of training to facilitate access to a regular on-going vacancy. The casual list must be for an occupation in which the employee received re-training.

The employee will retain the ability to access portable benefits and have seniority restored for six (6) months following the completion of the re-training if the employee is successful in posting into a regular on-going vacancy.

- h) HEABC and the Community Bargaining Association will work with public post-secondary institutions to maximize the training opportunities for the employee and the Employer.
- i) The Re-Training Committee will also be responsible for allocating payments from the Fund for ERIP, VDP, or Enhanced Severance as referenced in Section 5.1 of the Settlement Agreement to employees impacted by contracting out. Prior to making any allocations available for ERIP/VDP, the Re-Training Committee will

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give due consideration to the priority that the Parties place on making funds available for re-training.

### **Part 3 – Other Options**

The following options are available for consideration by the Employer at its discretion:

- a) Early Retirement Incentives and/or Voluntary Departure Incentives. If such incentives are made available to employees impacted by contracting out, such incentives will only be granted where vacancies would be created by the departing employee(s) which would be filled by other employees who would otherwise be laid off due to contracting out. Such incentives will be provided only to the extent that the Re-Training Committee provides financial support from its Fund.
- b) Other options for labour adjustment suggested by the Union, including voluntary recognition of the Union.